

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emilia Mancini	Team: Squad #6	CCRB Case #: 201805519	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/02/2018 6:40 PM	Location of Incident: Subway station of East 149th Street and 3rd Avenue	Precinct: 40	18 Mo. SOL 1/2/2020	EO SOL 1/2/2020	
Date/Time CV Reported Tue, 07/03/2018 11:55 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/09/2018 11:18 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Keynes Pena	21028	945276	TB DT12
2. POM Abu Hassan	05240	964548	TB DT12

Officer(s)	Allegation	Investigator Recommendation
A.POM Keynes Pena	Force: Police Officer Keynes Peña used a chokehold against § 87(2)(b)	
B.POM Keynes Pena	Force: Police Officer Keynes Peña used physical force against § 87(2)(b)	
	§ 87(4-b), § 87(2)(g)	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 3, 2018, Sgt. Awaz Raphique of Transit Bureau District 12 called the IAB Command Center to report this complaint under log number 18-26126.

On July 2, 2018, at approximately 6:40 p.m., in the subway station of 149<sup>th</sup> Street and 3<sup>rd</sup> Avenue in the Bronx, PO Keynes Peña and PO Abu Hassan observed § 87(2)(b) enter the subway without paying a fare. PO Peña and PO Hassan approached § 87(2)(b) and as they were running a warrant check on him, § 87(2)(b) ran away. PO Peña ran after § 87(2)(b) placed him in a chokehold (**Allegation A: Force, § 87(2)(g)**) and forcibly took him down to the ground to place him into custody (**Allegation B: Force, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was arrested with charges of § 87(2)(b)

§ 87(2)(b)

Video footage was obtained from the MTA surveillance camera located inside the station.

### Findings and Recommendations

**Allegation A - Force: PO Keynes Peña used a chokehold against § 87(2)(b)**

**Allegation B – Force: PO Keynes Peña used physical force against § 87(2)(b)**

Despite utilizing all methods of potential contact information for § 87(2)(b) contact was never successfully established. Therefore, the investigation could not obtain a sworn statement from him. However, § 87(2)(b) was interviewed by IAB and provided a short statement regarding this incident which were captured in the Threat, Resistance and Injury report (TRI) and Investigating Supervisor's Assessment Report (ISAR). The reports note that § 87(2)(b) admitted to using the emergency gate. After he passed through it, he was stopped by PO Hassan and PO Peña. After a few minutes, § 87(2)(b) ran from the officers. PO Peña and PO Hassan gave chase and apprehended § 87(2)(b) by the turnstile by throwing him on the ground, which caused pain to his lower back and triggered an old injury. § 87(2)(b) confirmed that he had smoked crack about an hour before the incident [BR 01].



Snagit 201805519.mp4

Video footage from the 149<sup>th</sup> Street and 3<sup>rd</sup> Avenue subway station depicts § 87(2)(b) run by the emergency gate from the train platform toward the turnstiles and the exit of the station, followed by two uniformed officers, identified as PO Peña and PO Hassan. § 87(2)(b) runs through a turnstile followed by both officers. When § 87(2)(b) is halfway through the turnstile, PO Peña grabs § 87(2)(b)'s shirt and pulls him back. At the same time, PO Hassan walks through the turnstile next to § 87(2)(b) and grabs § 87(2)(b)'s right elbow with his right hand. § 87(2)(b) pushes his body forward through the turnstile while PO Peña pulls § 87(2)(b)'s shirt and holds him back. PO Peña puts his right arm around § 87(2)(b)'s neck and right shoulder area and pulls him back in between the turnstile in a chokehold position. PO Peña turns around so that his back faces the exit/entrance of the station and takes a couple of steps backward, dragging and pulling § 87(2)(b) in his direction. PO Hassan holds § 87(2)(b)'s right wrist from the handcuff that he placed on him. PO Peña walks backward faster and releases § 87(2)(b) who slips down from PO Peña's body and falls to the ground. § 87(2)(b) lands with his chest down and

leans on his left elbow. As soon as PO Peña takes § 87(2)(b) to the ground, he loses balance, trips and falls ahead of where § 87(2)(b) is laying. PO Peña falls outside the camera frame. PO Hassan secures the handcuff on § 87(2)(b)'s right wrist. PO Peña gets up, walks to § 87(2)(b), bends on his knees and, with PO Hassan, grabs § 87(2)(b)'s left arm, and both officers handcuff § 87(2)(b) [BR 02].

PO Peña stated that he caught up to § 87(2)(b) in the middle of a turnstile. PO Hassan followed behind PO Peña. When PO Peña was close enough to § 87(2)(b), he grabbed § 87(2)(b) by putting his left arm around § 87(2)(b)'s ribs and his right arm over § 87(2)(b)'s right shoulder. PO Peña held § 87(2)(b) back as § 87(2)(b) pushed forward to continue to try to get away. PO Peña did not think there was a struggle between him and § 87(2)(b) but instead a back and forth to prevent § 87(2)(b) from fleeing again. PO Peña denied that he grabbed § 87(2)(b) anywhere else on his body, used any other force on § 87(2)(b) or placed him in a chokehold. PO Peña did not recall whether he made physical contact with § 87(2)(b)'s neck. PO Peña put his foot in front of § 87(2)(b)'s leg and pushed him forward using his shoulders as leverage to take § 87(2)(b) to the ground. § 87(2)(b) slipped on PO Peña's body and fell, chest-down, to the ground. Due to the force of bringing § 87(2)(b) to the ground, PO Peña tripped and fell ahead of § 87(2)(b). PO Peña described his actions as a forcible takedown on § 87(2)(b) to prevent him from escaping custody [BR 03].

Upon reviewing the MTA surveillance footage, PO Peña initially stated that he put his arm around § 87(2)(b)'s right shoulder. PO Peña later amended this statement and said he was not aware that he placed his arm around § 87(2)(b)'s neck but as the video showed, it might have inadvertently happened because § 87(2)(b) kept moving and pushing forward to run away. During his interview, PO Peña did not use the word chokehold but explained that he placed his arm around § 87(2)(b)'s neck to hold him back and to prevent him from running away [BR 03].

PO Hassan's testimony was generally consistent with PO Peña's account. PO Hassan confirmed he walked to the end of a turnstile and grabbed § 87(2)(b)'s hand. PO Peña followed § 87(2)(b) through the turnstile and put both arms around § 87(2)(b)'s body, at chest height. PO Hassan denied that PO Peña grabbed or touched § 87(2)(b) from any other part of his body. PO Peña pushed § 87(2)(b) with both hands and made him fall to the ground to overcome his resistance and place him into custody [BR 04]. PO Hassan assisted by placing § 87(2)(b) in handcuffs. As no force was used by PO Hassan, no allegations were pleaded to him.

PO Hassan reviewed the MTA footage but did not acknowledge PO Peña's action of placing his arm around § 87(2)(b)'s neck and did not amend his statement [BR 04].

As noted, the TRI and ISAR do note that a forcible takedown was used to overcome resistance due to § 87(2)(b) fleeing. The TRIs do not report that a chokehold or other force was used. PO Peña was at § 87(2)(b) with § 87(2)(b) when the reports were prepared [BR 03]. PO Hassan provided a narrative of the incident to his captain, who prepared the TRI [BR 04].

NYPD Patrol Guide, Section 221-01 notes that officers shall not use a chokehold at any time. A chokehold shall include but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Officers may use reasonable force under the circumstances to place a person in custody or to prevent escape from custody [BR 07].

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 09].
- PO Peña has been a member of service for 11 years and this is the first CCRB complaint to which he has been a subject.

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of November 7, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint [BR 10].

- § 87(2)(b) [REDACTED]

§ 87(2)(b)

Investigator:	<hr/>	<hr/>	<hr/>
	Signature	Print Title & Name	Date
Squad Leader:	<hr/>	<hr/>	<hr/>
	Signature	Print Title & Name	Date
Reviewer:	<hr/>	<hr/>	<hr/>
	Signature	Print Title & Name	Date

**CCRB Case # 201805519**